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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,123	10/19/2006	Boydan Joseph Mudryk	SPRU-03	5935
26875 7590 04/21/2008 WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202				
EXAMINER				
ADDIE, RAYMOND W				
ART UNIT		PAPER NUMBER		
3671				
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04/21/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/561,123

Applicant(s)

MUDRYK ET AL.

Examiner

Raymond W. Addie

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 October 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-850)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date 12/21/2007.

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statements filed 12/21/07 fail to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the references are not properly listed. Each patent or NPL, should be separately listed, and not listed as "IN THE FEDERAL COURT OF AUSTRALIA NEW SOUTH WALES DISTRICT REGISTRY ...Exhibit JHW-; Exhibit MRT-". It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

If the reference is a statement or affidavit by Applicant, it should be filed as secondary evidence, with a statement of relevance; and not as prior art.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, recites "an elongate body...(having) a body front face and a body rear face" in lines 3-4. Claim 1 further recites "a surface coating applied to said body front and rear faces and respectively providing an exposed front face and an exposed rear face of said roadside post". It is indefinite as to how the front and rear faces can be exposed, if in fact they are covered by a surface coating. Thus the limitation is seen to require a surface coating covering said front and rear faces of said roadside post.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitations of claims 30, 31 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency.

Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 7, 9, 13-18, 21, 24, 25, 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Pellowski # 3,362,305.

Pellowski discloses a roadside post (10) having a substantially arcuate transverse cross-section and made of spring steel. The post (10) being elastically bendable through 90 degrees upon impact by a vehicle or the like. See Col. 2, Ins. 20-30.

Pellowski further discloses the use of a surface coating (35), such as a colorant, disposed on both front and rear surfaces of the sheet of spring steel (10).

See Col. 4, Ins. 35-45.

With respect to claims 9, 13, 14, 17, 24 Pellowski discloses the post (10) has a substantially arcuate shape, which inherently includes a central web and two lateral flanges extending therefrom.

Further, Pellowski discloses the post (10) has a lower end (11) that is tapered, thereby adapting the post for being driven into the ground. See Col. 13, Ins. 20-27.

With respect to claims 15, 16 Pellowski discloses the post (10) is provided with a plurality of holes (16) adjacent the lower end (11) of the post (10) to aid in holding the post (10) firmly in the ground to a desired depth. See Col. 3, Ins. 31-37; Fig. 5.

With respect to claims 18, 21, 25, 28 Pellowski discloses at least one recess (12) can be formed in the ground, for receiving said roadside post (10). And arcuate recesses (14) can be formed when "the strip element (10) is flexed or bent over in opposite directions to a generally horizontal condition, whereby to form arcuate surfaces (14) which extend outwardly from the opposite sides of the strip element (10)...Figures 4, 5...the strip element (10) may be flexed or bent more easily, and the life and durability of the strip element (10) is greatly increased". See Col. 2, Ins. 39-62.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 9, 10-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Stirtz # 5,238,322 in view of Hendrickson # 2,646,969 and Mudryk et al. # 6,267,529 B1.

Stirtz discloses a roadside post (10) comprising:

An elongate body (10a, b) formed of a single sheet of flexible material.

The body having a central web portion (20) and two lateral flanges (21, 22).

As illustrated the lateral flanges extending approximately 150-175 degrees relative to the central web portion.

The body being elastically bendable through 90 degrees, such as when impacted by a vehicle, such that the body can return to its original upright position after the impact.

See Col. 1, ln. 49-col. 2, ln. 23.

What Stirtz does not disclose is the use of spring steel and a surface coating.

However, Stirtz explicitly recites the advantages of using a heat treatable material.

Further, Hendrickson teaches it is known to use heat treated spring steel for roadside support posts (14). The support posts store and release a maximum amount of energy and increase the time in which the road shocks (vehicle impacts) are absorbed and released. See Col. 2, lns. 33-50.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to make the roadside post of Stirtz, from heat treated spring steel, as taught by Hendrickson, in order to improve impact energy absorption and release. Still further, Mudryk et al. teaches it is known to make steel roadside posts (1) with a powder coating to improve their visibility and weather resistance. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the roadside post of Stirtz in view of Hendrickson, with a powder coating, as taught by Mudryk et al., in order to improve visibility and weather resistance of the post. See Col. 3, Ins. 21-35.

With respect to claims 3-6 Stirtz discloses essentially all that is claimed, except for the use of spring steel. However, Hendrickson teaches it is known to use heat treated spring steel for the roadside support posts. Hence, it would be obvious the specific type of steel used would be a design choice, based on anticipated impact loads. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to make the roadside post of Stirtz from spring steel, as taught by Hendrickson, in order to improve impact energy absorption and release.

With respect to claims 11-16 Stirtz discloses the lower end (12) of the roadside body is adapted (by tapering) to be driven into the ground to a design depth, demarcated by a mark, such as a bend (10e) in the body (10).

What Stirtz does not disclose is the use of a rigid base member fixed to the body. However, Mudryk et al., teaches it is known to provide flexible traffic posts (1) with a rigid base member (4) of galvanized steel, and having a tapered end to facilitate driving the post into a support base, such as ground or roadway. Further, Mudryk et al. clearly illustrates holes (54) in the rigid base member (4), which obviously can be use to indicate the depth to which the base is disposed in the support base, such as the ground or roadway. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the roadside post of Stirtz, in view of Hendrickson, with a rigid base member, as taught by Mudryk et al., in order to facilitate driving the post into hard soils as are known to exist adjacent roadways, sidewalks and the like. See Col. 3, Ins. 20-34.

With respect to claims 18-23 Stirtz in view of Hendrickson disclose essentially all that is claimed, except for forming a recess in the ground adjacent the post body. However, Mudryk et al., teaches it is well known roadside posts "have been installed by driving them into the ground, or by securing them in bore holes dug into the ground". Hence, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to dispose the roadside post of Stritz in view of Hendrickson, in a recess, in the ground, as taught by Mudryk et al., since to do so only requires routine skill in the art.

With respect to claim 24, Stirtz discloses the step of driving the post body into the ground.

With respect to claims 25-28, Stirtz in view of Hendrickson disclose essentially all that is claimed, except for forming a recess in the ground adjacent the post body.

However, Mudryk et al., teaches it is well known roadside posts "have been installed by driving them into the ground, or by securing them in bore holes dug into the ground".

Hence, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to dispose the roadside post of Stirtz in view of Hendrickson, in a recess, in the ground, as taught by Mudryk et al., since to do so only requires routine skill in the art.

5. Claims 7, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stirtz # 5,238,322 in view of Hendrickson # 2,646,969 and Mudryk et al. # 6,267,529 B1 as applied to claim 1 above, and further in view of Kennedy # 6,375,385 B1.

The combination of paragraph 4 above, discloses essentially all that is claimed, to include a central web portion (20) and two lateral flanges (21, 22). But does not disclose a post body have a substantially arcuate transverse cross-section. However, Kennedy teaches it is well known to make spring steel roadside posts in a substantially arcuate shape to enhance strength and resilient bending when impacted by a vehicle.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to form the roadside post of Stirtz in view of Hendrickson and Mudryk et al. into an arcuate shape, as taught by Kennedy, in order to facilitate resilient bending of the post. See Kennedy Abstract.

6. Claims 3, 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pellowski # 3,362,305 in view of Mathesius et al. # 2,155,349.

Pellowski discloses a roadside post (10) having a substantially arcuate shape and made of spring steel. The post (10) being bendable through 90 degrees upon impact by a vehicle or the like. See Col. 2, Ins. 20-30.

What Pellowski does not disclose is the Rockwell Hardness or carbon content of the spring steel. However, Mathesius et al. teaches steel having high carbon contents and a Rockwell hardness less than C50 are known for having a high degree of ductility, toughness, resiliency and resistance to shock and fatigue. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to make the spring-steel roadside post of Pellowski from high carbon steel and other steel alloys having a Rockwell Hardness, less than C50, as taught by Mathesius, in order to provide the resiliency needed to bend upon impact and return to an upright condition, as suggested by Pellowski.

7. Claims 5, 6, 8, 10, 19, 20, 26, 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pellowski # 3,362,305.

Pellowski discloses essentially all that is claimed, to include a thin resilient strip of spring steel. But does not disclose the specific dimensions of the strip element (10) nor the size of the recesses (12, 14). However, the size and thickness of the spring steel strip element (10) is a matter of design choice, dependent upon the intended use and DOT regulations or requirements. With respect to the dimensions of the recess(es) formed in the roadway, Pellowski explicitly recites "A recess (12) is drilled or otherwise formed in the surface of the highway, as shown particularly in Figures 3-5". Hence, it would be obvious to one of ordinary skill in the art, that the recess (12) could be made to any desired depth, sufficient to permit the strip element (10) to bend without being pulled out of the roadway or ground. See Col. 2, Ins. 39-50.

8. Claims 11, 12, 22, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pellowski # 3,362,305 in view of Mudryk et al. # 6,267,529 B1.

Pellowski discloses essentially all that is claimed, to include a tapered bottom end for inserting the lower end of the post in soft ground or concrete. But does not disclose the use of a rigid base member. However, Mudryk et al. teaches it is known to provide roadside posts (1) with a tapered, rigid base member (4) to facilitate driving the post into a support base, such as the ground to a desired depth. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the roadside post of Pellowski with a rigid base member to facilitate driving the roadside post into hard soil, as is commonly found adjacent roadways, sidewalks and the like. See Col. 3, Ins. 30-57.

9. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pellowski # 3,362,305 in view of Schmanski Re. 32,045.

Pellowski discloses essentially all that is claimed, except for the use of longitudinal reinforcing ribs. However, Schmanski teaches it is known to provide roadway delineators (10) with a central (11) and lateral (13) ribs to improve the elastic modulus of the delineator to a desired strength. Schmanski explicitly recites "The effect of slightly protruding rib structure(s) however, is to extend the apparent thickness of the delineator and thereby increase the moment of inertia I, without subjecting the rib structure(s) to excessive stress during the dynamic bending phase". Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the roadway post, of Pellowski, with longitudinally extending ribs, as taught by Schmanski, in order to improve the moment of inertia and elastic modulus of the delineator. See Col. 5, lns. 39-68.

Allowable Subject Matter

10. Claims 30, 31 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

11. Applicant's arguments with respect to claims 1-28 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond W. Addie whose telephone number is 571 272-6986. The examiner can normally be reached on 7am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Raymond W. Addie/
Primary Examiner, Art Unit 3671

4/16/08